

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NATHAN JENSEN,

Movant,

vs.

No. CV 20-1107 WJ/GJF
(No. CR 16-2694 WJ)

UNITED STATES OF AMERICA,

Respondent.

ORDER PURSUANT TO *CASTRO V. UNITED STATES*

THIS MATTER is before the Court on a Motion for Production of Documents Necessary for Habeas Petition filed by Movant, Nathan Jensen, on October 26, 2020 (CV Doc. 1; CR Doc. 106) (“Motion”). The Court has also reviewed the docket in CR 16-2694 WJ. In the Motion, Movant Jensen states that he has “filed a second and successive § 2255 for relief under Rehaif.” (CV Doc. 1 at 1; CR Doc. 106 at 1). However, the Court docket in CR 16-2694 does not reflect that Movant Jensen has ever filed a first § 2255 motion challenging his conviction and sentence in that case. Therefore, the Court is considering recharacterizing the instant Motion for Production of Documents as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence.

Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when

a court recharacterizes a pro se litigant’s motion as a first § 2255 motion . . . the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restriction on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Movant Jensen that it intends to recharacterize his Motion as a first § 2255 motion and afford him an opportunity to withdraw the motion or to amend it to add any additional claims he may have. *See* Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: “(1) specify ***all grounds*** for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.” (emphasis added)). If Movant Jensen fails to timely amend or withdraw his Motion, then the Motion may be recharacterized and any subsequent § 2255 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS ORDERED that Movant Jensen is **GRANTED** leave to amend or withdraw his Motion (CV Doc. 1; CR Doc. 106), which the Court intends to recharacterize as a first motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, within ninety (90) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of the Court shall **MAIL** a copy of this Order, together with a form § 2255 motion and instructions, to Movant Jensen.


UNITED STATES MAGISTRATE JUDGE